

COUNTY AND MUNICIPAL LAND USE

AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mark B. Madsen

House Sponsor: Michael T. Morley

LONG TITLE

General Description:

This bill modifies county and municipal land use provisions.

Highlighted Provisions:

This bill:

- ▶ prohibits counties and municipalities from requiring, as a condition of land use application approval, a person to obtain documentation regarding a school district's willingness, capacity, or ability to serve the development proposed in the land use application;
- ▶ prohibits counties and municipalities from charging fees that exceed applicable costs; and
- ▶ requires counties and municipalities, on request, to itemize and show the basis of fees they impose.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-9a-509, as last amended by Laws of Utah 2008, Chapters 112 and 279

10-9a-510, as renumbered and amended by Laws of Utah 2005, Chapter 254

17-27a-508, as last amended by Laws of Utah 2008, Chapters 112 and 279

17-27a-509, as renumbered and amended by Laws of Utah 2005, Chapter 254

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 10-9a-509 is amended to read:

**10-9a-509. Applicant's entitlement to land use application approval --
Exceptions -- Application relating to land in a high priority transportation corridor --
Municipality's requirements and limitations.**

(1) (a) Except as provided in Subsection (1)(b), an applicant is entitled to approval of a land use application if the application conforms to the requirements of the municipality's land use maps, zoning map, and applicable land use ordinance in effect when a complete application is submitted and all fees have been paid, unless:

(i) the land use authority, on the record, finds that a compelling, countervailing public interest would be jeopardized by approving the application; or

(ii) in the manner provided by local ordinance and before the application is submitted, the municipality has formally initiated proceedings to amend its ordinances in a manner that would prohibit approval of the application as submitted.

(b) (i) Except as provided in Subsection (1)(c), an applicant is not entitled to approval of a land use application until the requirements of this Subsection (1)(b) have been met if the land use application relates to land located within the boundaries of a high priority transportation corridor designated in accordance with Section 72-5-403.

(ii) (A) A municipality shall notify the executive director of the Department of Transportation of any land use applications that relate to land located within the boundaries of a high priority transportation corridor.

(B) The notification under Subsection (1)(b)(ii)(A) shall be in writing and mailed by certified or registered mail to the executive director of the Department of Transportation.

(iii) Except as provided in Subsection (1)(c), a municipality may not approve a land use application that relates to land located within the boundaries of a high priority transportation corridor until:

58 (A) 30 days after the notification under Subsection (1)(b)(ii) is received by the
59 Department of Transportation if the land use application is for a building permit; or

60 (B) 45 days after the notification under Subsection (1)(b)(ii) is received by the
61 Department of Transportation if the land use application is for any land use other than a
62 building permit.

63 (c) (i) A land use application is exempt from the requirements of Subsection (1)(b) if:

64 (A) the land use application relates to land that was the subject of a previous land use
65 application; and

66 (B) the previous land use application described under Subsection (1)(c)(i)(A)
67 complied with the requirements of Subsection (1)(b).

68 (ii) A municipality may approve a land use application without making the required
69 notifications under Subsection (1)(b) if:

70 (A) the land use application relates to land that was the subject of a previous land use
71 application; and

72 (B) the previous land use application described under Subsection (1)(c)(ii)(A)
73 complied with the requirements of Subsection (1)(b).

74 (d) After a municipality has complied with the requirements of Subsection (1)(b) for a
75 land use application, the municipality may not withhold approval of the land use application
76 for which the applicant is otherwise entitled under Subsection (1)(a).

77 (e) The municipality shall process an application without regard to proceedings
78 initiated to amend the municipality's ordinances if:

79 (i) 180 days have passed since the proceedings were initiated; and

80 (ii) the proceedings have not resulted in an enactment that prohibits approval of the
81 application as submitted.

82 (f) An application for a land use approval is considered submitted and complete when
83 the application is provided in a form that complies with the requirements of applicable
84 ordinances and all applicable fees have been paid.

85 (g) The continuing validity of an approval of a land use application is conditioned

upon the applicant proceeding after approval to implement the approval with reasonable diligence.

(h) A municipality may not impose on a holder of an issued land use permit or approved subdivision plat a requirement that is not expressed:

(i) in the land use permit or subdivision plat, documents on which the land use permit or subdivision plat is based, or the written record evidencing approval of the land use permit or subdivision plat; or

(ii) in this chapter or the municipality's ordinances.

(i) A municipality may not withhold issuance of a certificate of occupancy or acceptance of subdivision improvements because of an applicant's failure to comply with a requirement that is not expressed:

(i) in the building permit or subdivision plat, documents on which the building permit or subdivision plat is based, or the written record evidencing approval of the land use permit or subdivision plat; or

(ii) in this chapter or the municipality's ordinances.

(2) A municipality is bound by the terms and standards of applicable land use ordinances and shall comply with mandatory provisions of those ordinances.

(3) A municipality may not, as a condition of land use application approval, require a person filing a land use application to obtain documentation regarding a school district's willingness, capacity, or ability to serve the development proposed in the land use application.

Section 2. Section **10-9a-510** is amended to read:

10-9a-510. Limit on fees for building plans, land use applications, and inspections or reviews -- Itemization of fees.

(1) A municipality may not impose or collect a fee for reviewing or approving the plans for a commercial or residential building that exceeds the lesser of:

(a) the actual cost of performing the plan review; and

(b) 65% of the amount the municipality charges for a building permit fee for that building.

(2) Subject to Subsection (1), a municipality may impose and collect only a nominal fee for reviewing and approving identical plans.

(3) A municipality may not impose or collect:

(a) a land use application fee that exceeds the cost of processing the application; or

(b) an inspection or review fee that exceeds the cost of performing the inspection or review.

(4) Upon the request of an applicant or an owner of residential property, the municipality shall itemize each fee that the municipality imposes on the applicant or on the residential property, respectively, showing the basis of each calculation for each fee imposed.

Section 3. Section **17-27a-508** is amended to read:

**17-27a-508. Applicant's entitlement to land use application approval --
Exceptions -- Application relating to land in a high priority transportation corridor --
County's requirements and limitations.**

(1) (a) Except as provided in Subsection (1)(b), an applicant is entitled to approval of a land use application if the application conforms to the requirements of the county's land use maps, zoning map, and applicable land use ordinance in effect when a complete application is submitted and all fees have been paid, unless:

(i) the land use authority, on the record, finds that a compelling, countervailing public interest would be jeopardized by approving the application; or

(ii) in the manner provided by local ordinance and before the application is submitted, the county has formally initiated proceedings to amend its ordinances in a manner that would prohibit approval of the application as submitted.

(b) (i) Except as provided in Subsection (1)(c), an applicant is not entitled to approval of a land use application until the requirements of this Subsection (1)(b) have been met if the land use application relates to land located within the boundaries of a high priority transportation corridor designated in accordance with Section 72-5-403.

(ii) (A) A county shall notify the executive director of the Department of Transportation of any land use applications that relate to land located within the boundaries of

a high priority transportation corridor.

(B) The notification under Subsection (1)(b)(ii)(A) shall be in writing and mailed by certified or registered mail to the executive director of the Department of Transportation.

(iii) Except as provided in Subsection (1)(c), a county may not approve a land use application that relates to land located within the boundaries of a high priority transportation corridor until:

(A) 30 days after the notification under Subsection (1)(b)(ii) is received by the Department of Transportation if the land use application is for a building permit; or

(B) 45 days after the notification under Subsection (1)(b)(ii) is received by the Department of Transportation if the land use application is for any land use other than a building permit.

(c) (i) A land use application is exempt from the requirements of Subsection (1)(b) if:

(A) the land use application relates to land that was the subject of a previous land use application; and

(B) the previous land use application described under Subsection (1)(c)(i)(A) complied with the requirements of Subsection (1)(b).

(ii) A county may approve a land use application without making the required notifications under Subsection (1)(b) if:

(A) the land use application relates to land that was the subject of a previous land use application; and

(B) the previous land use application described under Subsection (1)(c)(ii)(A) complied with the requirements of Subsection (1)(b).

(d) After a county has complied with the requirements of Subsection (1)(b) for a land use application, the county may not withhold approval of the land use application for which the applicant is otherwise entitled under Subsection (1)(a).

(e) The county shall process an application without regard to proceedings initiated to amend the county's ordinances if:

(i) 180 days have passed since the proceedings were initiated; and

(ii) the proceedings have not resulted in an enactment that prohibits approval of the application as submitted.

(f) An application for a land use approval is considered submitted and complete when the application is provided in a form that complies with the requirements of applicable ordinances and all applicable fees have been paid.

(g) The continuing validity of an approval of a land use application is conditioned upon the applicant proceeding after approval to implement the approval with reasonable diligence.

(h) A county may not impose on a holder of an issued land use permit or approved subdivision plat a requirement that is not expressed:

(i) in the land use permit or subdivision plat documents on which the land use permit or subdivision plat is based, or the written record evidencing approval of the land use permit or subdivision plat; or

(ii) in this chapter or the county's ordinances.

(i) A county may not withhold issuance of a certificate of occupancy or acceptance of subdivision improvements because of an applicant's failure to comply with a requirement that is not expressed:

(i) in the building permit or subdivision plat, documents on which the building permit or subdivision plat is based, or the written record evidencing approval of the building permit or subdivision plat; or

(ii) in this chapter or the county's ordinances.

(2) A county is bound by the terms and standards of applicable land use ordinances and shall comply with mandatory provisions of those ordinances.

(3) A county may not, as a condition of land use application approval, require a person filing a land use application to obtain documentation regarding a school district's willingness, capacity, or ability to serve the development proposed in the land use application.

Section 4. Section **17-27a-509** is amended to read:

17-27a-509. Limit on fee for building plans, land use applications, and

198 **inspections or reviews -- Itemization of fees.**

199 (1) A county may not impose or collect a fee for reviewing or approving the plans for a
200 commercial or residential building that exceeds the lesser of:

201 (a) the actual cost of performing the plan review; and

202 (b) 65% of the amount the county charges for a building permit fee for that building.

203 (2) Subject to Subsection (1), a county may impose and collect only a nominal fee for
204 reviewing and approving identical plans.

205 (3) A county may not impose or collect:

206 (a) a land use application fee that exceeds the cost of processing the application; or

207 (b) an inspection or review fee that exceeds the cost of performing the inspection or
208 review.

209 (4) Upon the request of an applicant or an owner of residential property, the county
210 shall itemize each fee that the county imposes on the applicant or on the residential property,
211 respectively, showing the basis of each calculation for each fee imposed.